UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/C.12/1999/SR.18/Add.1
12 May 1999

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twentieth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)*
OF THE 18TH MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 6 May 1999, at 3.55 p.m.

Chairperson: Mrs. BONOAN-DANDAN

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* The summary record of the first part (closed) of the meeting appears as document E/C.12/1999/SR.18.

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GE.99-41680 (E)

The meeting was called to order at 3.55 p.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 8) (continued)

Second periodic report of Tunisia (E/1990/6/Add.14; E/C.12/Q/TUN/1; HR/CESCR/NONE/1999/5) (continued)

1. At the invitation of the Chairperson, the delegation of Tunisia resumed their places at the Committee table.

2. The CHAIRPERSON welcomed back the Tunisian delegation and apologised for the delay following the closed part of the meeting.

3. Mr. KOUZNETSOV said that the Committee was aware that, officially unemployment in Tunisia stood at 15 per cent, whereas the unofficial figure was 18 per cent. He would like to know whether the situation had improved or not.

4. Mr. AHMED, referring to an earlier question by Mr. Texier concerning the UGTT (Union générale tunisienne du travail) as the sole trade union organization allowed in Tunisia, said that there were advantages and disadvantages to having one trade union organization. On the one hand, it provided better control of the labour situation, but on the other it could also delay the process of legal strikes or other processes involving employees and employers. In view of the fact that any action taken had to go through the UGTT, which might imply that it had the power to accept or reject the wishes of local trade unions, what were the advantages of having a single trade union organization?

5. Quoting from Tunisia's written replies to the Committee's list of issues (HR/CESCR/NONE/1999/5) relating to article 134 of the Labour Code, he asked whether the Government played a role of compulsory arbitration between workers and employers, in the light of the fact that wages were fixed by decree. Furthermore, was the guaranteed minimum wage sufficient for an average-sized family to enjoy a decent standard of living? And what was the effect of the termination of the Government's General Compensation Fund, under which the prices of essential products had been subsidized? Had it caused prices to rise very sharply, and was that the reason for the less competitive labour costs?

6. Mr. ANTANOVICH, while commending Tunisia for its policy of equal pay for equal work, said that questions 10 and 11 had asked for more detailed information. The Committee would like to know whether the minimum wage was a floor for wages or whether it was a basic amount that was paid to ensure an adequate standard of living. Also, was it applicable to migrant workers? He inquired further whether persons in the minimum wage bracket or persons with minimum qualifications were offered training facilities to enable them to be better remunerated.

7. Mr. CEAUSU, recalling that the Tunisian Labour Code prohibited the unfair dismissal of employees and highlighting article 14 ter, which defined unfair dismissal as the absence of any genuine and serious grounds which justified dismissal, and the fact that serious misconduct was considered to provide such grounds, asked the delegation to provide a few instances of "serious misconduct". The Committee would also like to know whether it was always possible for an employee to bring a case of unfair dismissal before a judge and how frequently the recourse to litigation was used in that regard.

8. Turning to the question of the dismissal of staff representatives, he recalled that, under article 166 of the Labour Code, such cases should be brought before the Labour Inspectorate and wondered what the procedure would be should the Labour Inspectorate find that there had been reasonable grounds for dismissal. He was aware that unfair dismissal entitled the worker to certain compensation and damages, but he wondered whether the court could decide to reinstate an unfairly dismissed employee. On trade union rights, he inquired as to the legal status of the UGTT and the relationship between the UGTT and the political party in power.

9. Mr. WIMER said it was difficult to understand how the UGTT functioned without knowing the nature of its relationship to the party in power. As far as he had understood, large trade union federations usually played an important role in one-party or dominant-party systems. It was, therefore, not simply a legal issue but a political one as well. He would also like to know whether there was any trade union activity outside the UGTT or whether the UGTT dominated trade union activity.

10. Mr. MORJANE (Tunisia), giving the historical background of the UGTT, said that the union was a special case, not only for Tunisia, but for the entire Arab world and Africa.

11. The Tunisian trade union movement had begun in the 1920s while the country had been under French colonial rule. The involvement of Tunisian workers in political life had been epitomized by their active role in the Parti Socialiste Destourien, founded in 1934 by former President Habib Bourguiba, which had represented more of a nationalist than a political movement. In 1945, Ferchat Hached - then a member of the French Confédération générale du travail (CGT) - along with his Tunisian CGT colleagues, had formed the UGTT (Union générale tunisienne du travail) as a pro-independence movement in opposition to the CGT, which had not embraced Tunisian political and nationalist sentiments. The UGTT had functioned alongside the pro-independence party of the time (forerunner to the current dominant party). There had been later divergencies between the two but, in a Socialist State practising a planned economy, the UGTT had been viewed as the trade union wing of the party. However, subsequent developments had led to the UGTT regaining its independence.

12. The UGTT and its leadership had no tie whatsoever with either the existing Government or any political party. The UGTT's dominance was surely due to its exceptional leaders and no doubt workers felt safer belonging to such a strong union grouping. However, the formation of several trade unions was neither prohibited by law nor by the Government.

13. Mr. TRABELSI (Tunisia) reiterated that the Labour Code did not prohibit the formation of various trade unions. Indeed, its provisions referred to trade unions in the plural. Trade union law in Tunisia drew on labour law, the Framework Collective Agreement and sectoral collective agreements. That body of law had been strengthened further by a new law, which had come into effect in April 1999, amending the law of 1985 with regard to the general statutes of public sector personnel. Workers' trade union rights were guaranteed under the law and no prejudicial action could be taken by employers against workers for trade union involvement, as long as the latter's professional activity did not contravene the law. Workers were protected against dismissal, and the Labour Code contained both preventive and repressive provisions in that regard in the interest of workers, especially staff representatives. The Labour Code also protected workers against unfair dismissal. Cases of unfair dismissal were first to be presented to the consultative committee of the enterprise, then to the Labour Inspectorate for the delivery of an opinion within a 10-day period. If the dismissal was accepted by the Labour Inspectorate, it had to be justifiable by law. However, if the dismissal was found to be unfair, the worker could take the case to the Industrial Tribunal, a service provided for under the Labour Code free of charge. The tribunal's decision was not bound by any decision taken by any other body.

14. With reference to the right to strike, amicable solutions should be sought to collective conflicts at the company level in the first instance, before more serious measures were resorted to, such as strikes and lock-outs. Regional unions of the UGTT could grant or refuse a notice to strike. A major part of the Labour Code had been revised in collaboration with the UGTT and the two employers' organizations, after prior consultation with them on the legality of strikes.

15. A judge could not impose reintegration of an unfairly dismissed employee but could order the employer to pay compensation. As to the minimum age for admission to employment, Tunisia had ratified International Labour Organization Convention No. 138, modifying its domestic law accordingly. The minimum age for employment in agriculture was 13 years. However, work should be light, not harmful to the young workers' health or normal development nor interfere with school attendance or vocational training. The employer was liable to pay a fine if those conditions were not observed. Additionally, domestic legislation had been harmonized with International Labour Organization provisions on maximum loads to be carried by workers. He apologized for the unavailability of the relevant text but promised to make it available to the Committee in the near future.

16. Foreigners received the same minimum wage as nationals, having as they did the same rights and obligations under article 263 of the Labour Code. On the subject of collective bargaining, he said that the progress made in that regard was a source of great pride to the country. Collective bargaining agreements - 49 were currently in effect - were negotiated on the basis of the framework Collective Agreement, which was every three years. In fact, a round of collective discussions between the State and the social partners on the forthcoming review of the existing agreement were currently underway. The procedure comprised an initial negotiation at the sector level, in which the workers' and employers' unions took part. The second stage involved a central

negotiating committee comprising representatives of the Government, the employers' union and the workers' union, which helped resolve certain general problems, especially regulatory matters. The administration did not intervene in the negotiations between the social partners; but at the final stage a sector negotiating committee, composed of the General Secretary of the Tunisian General Workers' Union (UGGT) and the president of the employers' union and the Minister of Social Affairs, simply approved for publication in the Official Gazette the new clauses concluded by them.

17. Mr. CHERIF (Tunisia) said that there was a positive freedom to work and a negative freedom not to work. Freedom to work was covered by the broad principles of freedom of commerce and industry, and in the industrial and agricultural sectors by the different provisions of the Labour Code explained by the previous speaker. Articles 136 and 137 of the Tunisian Penal Code sanctioned anyone who restricted a person's right to work. By the same token, the right not to work was also legally guaranteed. A law enacted in the 1960s, which permitted the authorities to impose forced labour on the unemployed, usually for the minimum wage, had been repealed in 1995, in accordance with human rights law. With the abrogation in 1989 of all articles in the Penal Code authorizing forced labour, even forced labour of convicts had been abolished and replaced with a prison term of the same duration.

18. The right to strike, enshrined in Tunisian law as an avenue for labour claims or pressure, could be freely exercised if the conditions of prior notification were observed and with the approval of the trade union organization. Strikes and lock-outs could not be considered as violating the right to work or not to work, since they were not directly linked to the general freedom to work.

19. Mr. MORJANE (Tunisia), replying to questions concerning purchasing power and the minimum wage, said that dialogue had become one of Tunisia's firm principles, as attested to by the development of collective bargaining in recent years and the signing of three 3-year framework agreements, the most recent of which was drawing to a close.

20. The minimum wage was systematically raised with every increase in staple commodity prices and the overall cost of living, and had been adjusted some 15 times since 1987, most recently on 1 May 1999, to celebrate Labour Day. Only some 10 per cent of employed workers received the minimum wage, which also served as the basis for pension upgrades, and had increased annually by 4.6 per cent between 1989 and 1998. In addition to benefits paid from the social security fund, the 1960 law governing the private sector social security scheme and the 1985 law on civil service pensions had established minimum pensions of not less than two thirds the minimum wage.

21. The period of the Seventh Plan (1987-1991), which had coincided with the structural adjustment and economic restructuring, had witnessed a slight erosion of purchasing power. However, during the Eighth Plan period (1992-1996) purchasing power had increased by 3 per cent for the 48-hour regime and by 2 per cent for the 40-hour regime. The public and private sector minimum wage rises had boosted purchasing power by approximately 2 per cent in the past four years.

22. Responding to a request for figures on unemployment trends, he said that the most recent survey (1994) had revealed a 15 per cent reduction, with 2,320,600 of the active population in employment. It had also shown the 18-25 age group to be the largest group of unemployed, accounting for 39 per cent of the total. Those unemployed for less than one year accounted for 55 per cent, and those unemployed for over a year for 40.1 per cent. The unemployment figure for the skilled and educated was 1.6 per cent, which meant that 6,300 university graduates were out of work. Job development was the main axis of Tunisia's development policy, and various measures intended to ease entry into working life were already in place, including incentives such as an investment scheme whereby the State paid an employer's share of social security contributions for some years; various support mechanisms; rural development programmes; and the Solidarity Fund, as well as several mechanisms for retraining redundant personnel. A nationwide conference on youth unemployment - especially graduate unemployment - had been held in 1998, with the participation of all the social partners, most NGOs and the political parties, with a view to creating new jobs in the hope of reducing unemployment substantially in the following 10 years.

23. Mr. CEAUSU asked whether salaries earned in Tunisia by foreign workers from countries with which Tunisia had not concluded bilateral agreements could be transferred to those countries. Also, since a judge could not oblige an employer to reinstate someone who had been unfairly dismissed, it would appear that the victim was being penalized. Given the unpleasant atmosphere that might well prevail if the employer did agree to the reinstatement, he thought that the person responsible for the unfair dismissal should be fired and the victim reinstated.

24. Mr. TEXIER, observing that forced labour had not been effectively addressed, cited a complaint for the 1998 report of the Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organization (ILO) concerning three instances, in which persons had been imprisoned for offences relating to freedom of expression, freedom of the press and freedom of association and subjected to forced labour in prison. Decree-Law 69 of 24 January 1969 limited the protection extended by ILO Convention No. 105 to people who expressed opposition to the political regime. That Committee had recalled that a prison sentence could not be imposed for expression of political views.

25. The report of the ILO Committee of Experts also dealt with illegal strikes, pointing out that, under article 376 bis 2 of the Tunisian Labour Code, illegal strikers could be sentenced to imprisonment and, therefore, to forced labour. What was the status of amendments to that unlawful provision?

26. Mr. MORJANE (Tunisia) said that since many Committee members had stressed that subject, he would need to consult his colleagues so that he could provide a more convincing reply at the following meeting. If necessary, the matter would be taken up with the ILO Committee. He would also reply later to Mr. Ceausu's question on the transfer of foreign workers' earnings to their countries of origin.

27. The CHAIRPERSON invited Committee members to put their questions concerning articles 9, 10, 11 and 12 on social rights.

28. Mr. CEAUSU, said that, further to the reply to his question about the legal status of children born out of wedlock, he wished to know whether such children enjoyed the same rights as those born of married couples, especially the right to inherit on equal terms with a half-brother born in wedlock. While the written reply to question 22 had furnished examples of the protection provided for abandoned children, he would like further information concerning their ages and the magnitude of the problem.

29. The reply to question 25 had dealt extensively with violence against children. He suggested, however, that the fact that tradition deterred women from reporting conjugal violence against them might account for Tunisia's purportedly low incidence of that phenomenon. Referring to article 12, he said that since quality of life and health was largely dependent on the environment, he wished to know whether any measures were in place to establish water and air purity standards and to protect the environment as a whole.

30. Mr. SADI, on the subject of article 9, asked the delegation to shed light on the country's true socio-economic conditions, referred to in the written reply to question 17, that made it impossible for Tunisia to ratify ILO Conventions Nos. 102, 121, 128, 130 and 168. Although it was clear from the report that family allowances were granted for the first three children, no amount had been stated. He wondered whether those allowances, as well as social security payments to people who had lost their jobs, were index-linked. He also called for statistics on the beneficiaries.

31. Under article 10, while he appreciated Tunisia's difficulty with conferring on children born out of wedlock equal status with other children, he failed to see how that position could be reconciled with the Convention on the Rights of the Child, which specifically prohibited unequal treatment. An innocent child did not deserve to be victimized for its illegitimacy; blame, if any were needed, should attach to the parents. He sought clarification of the statement contained in the written reply to the effect that the classical approach based on legitimate paternity was being increasingly questioned in the courts, and called on the delegation to provide examples of court cases where that had occurred. He also asked it to explain in exactly what way the 1987 amendments to the Personal Status Code benefited the best interests of the child.

32. Mr. HUNT, on a point of clarification, asked whether the delegation would be responding to one of the unanswered questions at the following meeting. Further to Mr. Ceausu's question concerning article 10, he said that there were complex social and psychological reasons why much domestic violence went unreported. He suggested that an initial step might be to conduct an extensive scientific survey in order to ascertain its true extent. He also sought clarification from the delegation on the meaning of the term "a relative in the ascending line" quoted from article 218 of the Penal Code in paragraph 8 of the written reply to question 6.

33. Turning to article 11, he asked whether the Covenant had influenced the formulation of the measures that Tunisia had, interestingly and simultaneously, adopted to alleviate the effects on the poor of the comprehensive 1986 structural adjustment programme, or whether it was a happy

coincidence that they squared with some of its provisions. He would also like to know whether the Covenant expressly and specifically played any part in Tunisia's current formulation of its anti-poverty strategy.

34. Mr. RIEDEL warmly welcomed the delegation from a country he had wonderful memories of. He considered the quality of the report high, particularly the meticulous care taken in replying to the list of issues. He also commented that the social and economic stability and steady improvements were remarkable, and were a major stabilizing factor in the region.

35. Under article 10, the written replies stated that the problem of "street children" did not exist in Tunisia; however, there were children without parents or legal guardians, and the Child Protection Code would surely not be so detailed if the problem did not exist. He asked the delegation to discuss the issue in more detail. What were the precise role and effects of decisions by the courts and social agencies? How exactly had that role been strengthened?

36. The modern approach of the Child Protection Code, which took account of humanitarian principles and equity applied before the courts, was commendable. Did the delegation have access to statistics on the resolution of such cases? If not, it would be useful to have them included in the next report. Regarding the way the legal system treated children, could the delegation clarify the role of "special procedures" and "specialized advisers" and the relationship between them? Were there figures for 1996-1999 to show how the new court system had functioned?

37. With reference to article 11, there had apparently been 86.4 per cent guaranteed access to safe drinking water in 1997; what was the current figure? The reply to question 30 stated that compensation was always provided in cases of forced eviction; however, what was the legal redress against eviction decisions by an expropriating agency legally entitled to evict? Were there any cases of courts or higher courts intervening? Could the delegation explain section 2 of the reply to question 30, "the right to compensation in the event of eviction", which he found extremely confusing?

38. Referring to question 34 under article 12, and the provision of adequate sewage systems, which caused enormous problems to developing countries, he recalled that it had taken Germany around 20 years and considerable investments to achieve a proper three-tier system. Paragraph 313 of the report described what had been done regarding waste water quality control and bacteriological monitoring; what was the current state of affairs?

39. Regarding the National Strategy for the Prevention and Control of AIDS, he found the phrase "sentinel monitoring methods targeted on vulnerable groups" rather abstract, and asked the delegation to elaborate on it. Most Western European countries had problems devising anti-AIDS programmes whilst safeguarding data protection; what was being done in Tunisia regarding data protection issues? He commended the improvement of medico-social care available to drug addicts under the amended Narcotic Drugs Act, but asked the delegation to provide figures.

40. He had been interested to see how Tunisia had elaborated differentiated procedures for coping with mental health problems. Were there legal remedies for the patients, or their parents or guardians, if they disagreed with the findings of the experts? The report only described policies; what had been done in practice? Precise figures gave the Committee benchmarks against which to measure future progress.

41. Mr. AHMED was completely satisfied by the exhaustiveness of the replies to the list of issues. However, he had one pragmatic question on forced evictions. He thought the compensation of four years' rent, calculated on the basis of the last monthly rent, seemed rather small. Was it really adequate for a tenant to find new housing? The intention was good and certainly it was better than having no compensation, but economic difficulties needed to be taken into account.

42. Mrs. JIMENEZ BUTRAGUEÑO was pleased that Tunisian women were now able to pass on their nationality to their children. She also commended the Government for its interest in the elderly and disabled, and had been impressed by the provisions on access to civil buildings and elimination of architectural barriers to access. She asked, however, what facilities were provided for old people living alone. In Tunisia, traditionally, the family was very important; but perhaps the situation was changing, as in other Mediterranean countries, leaving some elderly or disabled people to cope alone. Was that the case? What aid was given to them? Was there any system of home help or sheltered accommodation, or provision of emergency telephones or beepers to summon help if they had urgent problems?

43. She apologized for her temporary absence - it had not denoted any disrespect for the delegation. She was extremely interested in their report, but had had to leave to make a speech at WHO. She asked what attention was given to the elderly in the Tunisian health system? How were health services for the elderly planned? Were there enough geriatric services? Perhaps at present Tunisia did not have the problem of an ageing population, but in the future it could be the case. Was that being taken into consideration in the future planning of the system?

44. What was the importance and role of grandparents and their relation to grandchildren in Tunisia? Did they have frequent contact and meetings? The role of grandparents was not just to play with grandchildren; it was also an educative role.

45. Mr. SADI asked whether Tunisia suffered from the phenomenon of "crimes of honour", which was a serious problem in his country; virtually the last statement by the late King Hussein had expressed the desire to deal with that issue. If a crime of honour was committed, was it punished? What kind of punishment was meted out? Was it commuted if a family member dropped a personal complaint?

46. Mr. TEXIER had figures showing that the investment in the health-care budget was less than the spending on health by sick people themselves. As a proportion of overall spending on health, government spending had apparently accounted for 45.3 per cent in 1987, and only 30.5 per cent in 1996, while the rate of expenditure on health for households had increased in the same period

from 39.7 per cent to 53.7 per cent; were those figures correct? How could they be explained? Had there been a privatization of medical care, or was it due to lower reimbursement by social security, or simply less investment by the State?

47. Mr. MORJANE (Tunisia) thanked the delegation for their many questions and great interest in Tunisia. Taking up the questions remaining from the morning session, he asked Mr. Kouznetsov whether his query had referred to the recent revisions to the Constitution of Tunisia and their impact on economic rights, or to the impact of new legislation in general?

48. Mr. KOUZNETSOV said he had been unaware of recent revisions to the Constitution. He had been referring to the revisions introduced in the 1980s, which directly established the economic rights of citizens.

49. Mr. MORJANE (Tunisia) had obtained information relating to the impact of recent amendments; he said he would have to consult with Tunis to reply to the specific question as clarified.

50. He understood Mr. Hunt's question and doubts regarding "national institutions", since the report included mention of several more administrative structures which possibly did not come within the Committee's definition of national institutions. The two main institutions, in the Committee's understanding of that term, would be the High Committee of Human Rights and the Ombudsman. In accordance with legal texts, both institutions were independent of the administration. They reported directly to the Head of State (the President). Since the head of the administration was the Prime Minister, there was no conflict of interest. In 1993 the High Committee had organized the second international meeting of national institutions in Tunis. There was, as yet, no internationally accepted definition of national institutions for the protection of human rights, although the Paris Principles were a great step forward in defining their status. Tunisia had attempted to clarify and specify a definition of national institutions which excluded official bodies and those without a legal base, that corresponded to the Committee's criteria. The High Committee had many independent activities, for instance its president had the right to visit prisons at any time without prior warning, to verify conditions.

51. Replying to Mr. Wimer Zambrano on the question of religious minorities, he said that article 5 of the Constitution guaranteed what he considered to be two key elements: freedom of conscience and freedom to celebrate religious rites, on condition they did not disturb public order. While religious freedom was part of the law, it was also applied in practice. However, he pointed out that despite Tunisia's cosmopolitan nature, there were in fact few religious minorities. There were very small communities of Jews and Christians, both of which were totally integrated and suffered no discrimination in law or in fact. The Jewish community in Tunisia numbered between 3,000 and 4,000, out of a population of over 9 million. That explained why they were not highly visible in government posts, inter alia. There had been Jews in the Government and the parliament after independence, but there were currently none. That was also due to the phenomenon of the ageing of the Jewish population, since many young Jewish Tunisians emigrated to France or Israel and returned to Tunisia only for holidays or pilgrimage.

52. Criticism had been levelled at Tunisia, because article 1 of the Constitution defined Tunisia as a Muslim State, and it was a condition of the Constitution that the President should be Tunisian and Muslim. He stressed that there were nonetheless no difficulties for adherents of other religions, and the small non-Sunni Muslim community also carried out their rites freely.

53. Mr. CHERIF (Tunisia) said there was dual protection of abandoned children in Tunisian law, both penal and civil. Article 212 and 212 (b) of the Penal Law defined abandonment and imposed sanctions on parents who abandoned their children. More severe sanctions were meted out to parents who abandoned children in unpopulated areas. That was based on the logic of the chances of survival for the child. Abandonment of a child away from inhabited areas demonstrated greater criminal intent, since it would be less likely for the child to be found and afforded the necessary protection. In civil law, Tunisian legislators had promulgated several laws to give social and legal protection to children. Those included the law of 4 March 1958 authorizing adoption, and kafala, or official guardianship in a surrogate family. They corresponded roughly to full adoption and simple adoption under French law. New provisions in 1985 established family placement, which involved taking abandoned children from centres and placing them in foster homes so that they could receive the care and affection of a family environment. Foster families received State aid to help with their expenses for the child. There were also centres and institutions for abandoned children, SOS Children's Villages, and social defence centres that took in children. Therefore, as the replies stated, Tunisia did not have a problem with street children. They were taken in by the public institutions or by one of the mechanisms created to recover them from the streets.

The meeting rose at 6 p.m.